

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
JUN 23 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Deployment of Wireline Services Offering |) | CC Docket No. 98-147 |
| Advanced Telecommunications Capability |) | |
| |) | |
| Implementation of the Local Competition |) | |
| Provisions of the Telecommunications |) | CC Docket No. 96-98 |
| Act of 1996 |) | |
| |) | |
| Applications for Consent to the Transfer of |) | |
| Control of Licenses and Section 214 |) | |
| Authorizations from Ameritech Corporation, |) | CC Docket No. 98-141 |
| Transferor to SBC Communications Inc., |) | |
| Transferee |) | |
| |) | |
| Common Carrier Bureau and Office of |) | |
| Engineering Announce Public Forum on |) | NSD-L-00-48 |
| Competitive Access to Next-Generation |) | DA 00-891 |
| Remote Terminals |) | |

**COMMENTS OF CORECOMM INCORPORATED,
MGC COMMUNICATIONS, INC. d/b/a MPOWER COMMUNICATIONS CORPORATION,
AND VITTS NETWORK, INC.**

Christopher A. Holt
Vice President/Assistant General Counsel
CoreComm Incorporated
110 East 59th Street, 26th Floor
New York, New York 10022
Tel: (212) 906-8485
Fax: (212) 906-8489

Counsel for CoreComm Incorporated

Kent F. Heyman
Senior Vice President & General Counsel
Francis D.R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Vice President, Legal Affairs
Mpower Communications Corp.
171 Sully's Trail - Suite 202
Pittsford, NY 14534
Tel: (716) 218-6568
Fax: (716) 218-0165

Counsel for MGC Communications, Inc.
d/b/a Mpower Communications Corp.

Helen E. Disenhaus
Eric J. Branfman
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7645

Counsel for CoreComm Incorporated, MGC
Communications, Inc. d/b/a Mpower
Communications Corp., and
Vitts Network, Inc.

Thomas S. Lyle
Regulatory Affairs Manager
Vitts Network, Inc.
77 Sundial Avenue
Manchester, NH 03103
Tel: (603) 656-8000
Fax: (603) 656-8100

Vitts Network, Inc.

June 23, 2000

SUMMARY

The Federal Communications Commission (“Commission”) should implement national standards for the provisioning of unbundled network elements, and, in particular, loops. The filing by The Association of Local Telecommunications Services (“ALTS”) of the Petition for Declaratory Ruling seeking the establishment of standards for loop provisioning could not have come at a more fortuitous time for the telecommunications industry. After four years of litigation on a federal and state level, a list of network elements to which competitive local exchange carriers (“CLECs”) are entitled on an unbundled basis has finally been firmly implemented. CLECs are finding this, to some extent, however, to be a Pyrrhic victory, as they are experiencing problems in the provisioning of the unbundled network elements, and, in particular, loops.

The provisioning of loops by incumbent local exchange carriers (“ILECs”) has been anything but timely and efficient, and has impeded the CLECs’ roll out of services. The infirmities appear at every stage of the loop provisioning process from the pre-order stage to the maintenance/repair stage. At the pre-ordering stage, CLECs have had difficulties in interfacing with ILEC databases to get vital information needed to prepare an order. The information provided through the interface is very often in an unformatted manner that requires extensive time and effort on part of the CLEC to transform the information into a parsed format required for placing orders. It also takes an inordinate period of time for CLECs to get information about the “make-up” of loops so that they can determine what services they can offer. ILECs are able to leverage this intrinsic informational advantage at the pre-ordering stage to get a jump on their competition.

At the ordering stage, a further backlog for CLECs develops as CLECs, not through any fault of their own, are experiencing high order rejection rates. Many orders are transferred from electronic to far-longer manual processing. Thus, ILEC orders are able to “flow-through” the ordering system at a higher rate. Compounding this problem is the fact that rejection notices are not returned to CLECs in a timely manner, inhibiting CLECs from correcting and resubmitting orders immediately.

Once the order is processed, there is still no guarantee that the customer will get the service it requested, as ILECs are missing appointments for many installation dates. What is worse is that the ILEC will often fail to notify the CLEC of the appointment being in “jeopardy,” so the CLEC is prevented from rescheduling to avert the missed appointment. The result is a frustrated customer who will blame its immediate point of contact, the CLEC. The above factors coupled together lead to interminable intervals for the provisioning of the order. The situation is particularly troublesome in the area of coordinated conversions of the customer’s service, *i.e.*, where an active loop is converted. These conversions entail the customer being out of service during the change over, and this cut-over of service very rarely goes smoothly or expeditiously.

It often seems that after the loop is provided, the ILEC feels its obligation has ended, even while CLECs are experiencing sub-standard provisioning of maintenance and repair services. The ILEC response time to trouble reports is poor, and it will often take days or weeks for service to be restored. The quality of the work is deficient, as many customers continue to experience problems even after the ILEC reports that it has solved the problem. Even when the problem is solved initially, the problems may reoccur, and the customer and the CLEC have to endure the same arduous repair process again.

These problems cannot be reduced to the “growing pains” of competitors forced to rely on each other to make the system work. In many cases, ILECs have built inherent delays into the system through procedures and requirements clearly designed to impede CLEC provision of service. For instance, CLECs are required to complete their collocation arrangements before ordering loops, despite this requirement having no operational basis. Thus, CLECs have to wait months to obtain loops and facilities that the ILECs will self-provide to their retail division in days. CLECs are being asked to pay exorbitant non-cost based prices for conditioning loops to provide xDSL services, and even when they pay such prices, there is no guarantee of timely delivery of the service. Meanwhile, certain ILECs are boasting of their plans to roll out xDSL service with a bang.

It is not enough that ILECs are tying the CLECs to the post while they sprint ahead in the advanced services market. The ILECs are deploying fiber loops and remote terminals, and limiting CLEC access to such facilities. What is worse is that these facilities limit CLEC access to copper facilities vital to their ability to keep up in the advanced services market. If this development continues unchecked, the “digital divide” will be the divide that exists between the ILECs and the CLECs.

The issues raised by ALTS, and documented in these Comments, are not the unsubstantiated complaints of scorned competitors. Rather these complaints are documented by evidence adduced in states across the U.S. Performance metrics have been developed throughout the country that chronicle the ILECs’ failure to provide non-discriminatory access to unbundled network elements. It has been such evidence that has proved fatal to all but one ILEC Section 271 application. This Commission has been the recipient of mounds of data documenting ILEC

failure to meet the standards set by the Telecommunications Act of 1996 and implemented by this commission and state commissions.

The Petition by ALTS provides an opportunity for this Commission to address these issues. The Section 271 application process has been useful in that it provides a wealth of data and analysis of ILEC performance, but it does not provide the opportunity to address and redress these problems on a global basis. This Petition, and the proceeding it has created, provides such an opportunity. The evidence against the ILECs is clear and unequivocal. The damage suffered by CLECs is substantial. The Commission needs to address these fundamental problems in the local exchange market. The Commission has the authority to impose national standards in regard to unbundled network elements, and it exercised that authority in creating a national list of UNEs. The Commission has the authority to exact monetary sanctions, including compensation to injured CLECs, from ILECs, and the Commission used that authority recently against Bell Atlantic. As shown in these comments, the Commission needs to combine national standards with substantive enforcement measures to further the pro-competitive goals of the Telecommunications Act of 1996.

Implementation of these standards will also benefit all segments of the industry. CLECs will obviously be benefited by the timely and effective provisioning of elements vital to their providing telecommunications services. Customers will reap the rewards of more substantive product choices and better service. This Commission and the state public utility commissions will have more definite measures by which to grade carrier performance. Even ILECs will benefit as they will know which standards they need to meet to comply with the Act. The

Commenters therefore urge the Commission to adopt national standards for provisioning UNEs, particularly loops, and to make them effective through enforcement and oversight.

TABLE OF CONTENTS

| | |
|---|----|
| SUMMARY | i |
| I. NATIONAL LOOP PROVISIONING STANDARDS ARE REQUIRED TO ENSURE TIMELY LOOP PROVISIONING AND EFFECTIVE, EFFICIENT STATE COMMISSION OVERSIGHT | 2 |
| A. THE COMMISSION RECENTLY IMPLEMENTED A NATIONAL LIST FOR UNBUNDLED NETWORK ELEMENTS | 2 |
| B. THE COMMISSION HAS THE AUTHORITY TO ESTABLISH NATIONAL STANDARDS | 4 |
| C. ESTABLISHMENT OF NATIONAL STANDARDS CAN BE EFFECTED BY A SYNTHESIS OF STATE-DEVELOPED STANDARDS | 6 |
| II. TIMELY LOOP PROVISIONING IS CRITICAL FOR EFFECTIVE LOCAL COMPETITION | 8 |
| III. POSSIBLE LOOP PROVISIONING STANDARDS | 9 |
| A. PRE-ORDERING PHASE STANDARDS | 10 |
| 1. STANDARD FOR APPLICATION-TO-APPLICATION INTERFACE | 11 |
| 2. LOOP MAKE-UP INFORMATION | 13 |
| B. LOOP ORDERING | 15 |
| 1. ORDER REJECTS | 15 |
| 2. TIMELINESS OF JEOPARDY NOTICES OF MISSED ILEC DEADLINES | 17 |
| C. PROVISIONING INTERVAL STANDARDS | 20 |
| 1. AVERAGE COMPLETION INTERVALS | 20 |
| 2. HOT CUTS | 21 |
| D. MAINTENANCE AND REPAIR | 25 |

| | | |
|------|--|----|
| 1. | MAINTENANCE AND REPAIR FUNCTIONALITY | 25 |
| 2. | RESPONSE TIMES..... | 26 |
| 3. | TIME TO RESTORE..... | 27 |
| 4. | QUALITY OF WORK PERFORMED | 28 |
| 5. | ESCALATION PROCEDURES | 30 |
| IV. | THE FCC SHOULD REQUIRE ILECs TO PROVIDE UNEs AT THE SAME TIME THEY ARE PROVISIONING COLLOCATION | 32 |
| V. | LOOP CONDITIONING SHOULD BE PROVIDED IN A TIMELY MANNER AND AT FORWARD-LOOKING COSTS | 33 |
| A. | LOOP CONDITIONING SHOULD BE PROVIDED IN A TIMELY MANNER... | 33 |
| B. | LOOP CONDITIONING SHOULD BE PROVIDED AT FORWARD- LOOKING COSTS..... | 35 |
| VI. | PROVISIONING STANDARDS FOR DLC AND FIBER LOOPS | |
| A. | THE COMMISSION SHOULD PRESERVE CLEC ACCESS TO COPPER FACILITIES | 38 |
| B. | THE COMMISSION SHOULD PRESERVE MEANINGFUL ACCESS TO SUBLOOPS | 40 |
| VII. | THE COMMISSION SHOULD SET FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE..... | 42 |
| | CONCLUSION..... | 44 |

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|--------------------------|
| In the Matter of |) | |
| |) | |
| Deployment of Wireline Services Offering Advanced Telecommunications Capability |) | CC Docket No. 98-147 |
| |) | |
| Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 |) | CC Docket No. 96-98 |
| |) | |
| Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee |) | CC Docket No. 98-141 |
| |) | |
| Common Carrier Bureau and Office of Engineering Announce Public Forum on Competitive Access to Next-Generation Remote Terminals |) | NSD-L-00-48 DA 00-891 |

**COMMENTS OF CORECOMM INCORPORATED,
MGC COMMUNICATIONS, INC. d/b/a MPOWER COMMUNICATIONS CORP.,
AND VITTS NETWORK, INC.**

CoreComm Incorporated (“CoreComm”), MGC Communications, Inc. d/b/a Mpower Communications Corp. (“Mpower”), and Vitts Network, Inc. (“Vitts”) (collectively the “Commenters”) by undersigned counsel and pursuant to the Commission’s *Public Notice* (dated May 24, 2000), submit these Comments supporting the “Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning” (“*ALTS Petition*”). For the reasons stated below the Federal Communications Commission (“FCC” or “Commission”) should grant the ALTS Petition and clarify, interpret, and modify its rules governing crucial aspects of loop provisioning by incumbent local exchange carriers (“ILECs”). The requested rule changes would establish necessary national standards that can be

applied expeditiously and with confidence by state public utility commissions to accelerate the development of local competition.

The Commenters are certified local exchange carriers ("CLECs") authorized to provide local exchange service in states throughout the U.S. The Commenters provide such service to residential and small business customers. The Commenters are in the process of building networks premised upon combining their own facilities and switches with leased lines and transport and collocation arrangements secured from incumbent local exchange carriers. The ability of the Commenters to implement this strategy and promote the development of viable local exchange competition is directly impacted by the issues raised by The Association of Local Telecommunications Services ("ALTS") in its Petition.

I. National Loop Provisioning Standards Are Required to Ensure Timely Loop Provisioning and Effective, Efficient State Commission Oversight

The Commenters unequivocally endorse the call for this Commission to implement national standards in regard to loop provisioning. This Commission recently reaffirmed the need for national standards in the area of access to unbundled network elements when it re-established a national list of unbundled network elements in the *UNE Remand Order*.¹ As the Commission noted:

[i]n the *Local Competition First Report and Order*, the Commission concluded that identifying a specific list of network elements that must be unbundled, applicable in all states and territories, would best further the 'national policy framework' Congress established to promote competition in local markets. In particular, the Commission found that a national list would: (1) allow requesting carriers, including small entities, to take advantage of economies of scale; (2) provide financial markets with greater certainty in assessing requesting carrier's business plans; (3) facilitate the state's ability to conduct arbitrations; and (4)

¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket 96-68 (November 5, 1999) ("*UNE Remand Order*").

reduce the likelihood of litigation regarding the requirements of Section 251(c)(3).²

These same factors require the establishment of a national standard for loop provisioning, which encompasses issues addressed in the *UNE Remand Order*. The proposed standards relate to the provisioning of unbundled loops, which is perhaps the central item on the list of network elements whose unbundling the Commission has already ordered. This Commission established a national baseline for unbundled network elements (“UNEs”) to which states could impose additional obligations as long as they further the goals of the Act.³ Likewise, the Commission should craft a national baseline for the provisioning of UNEs.

As the Commission noted, nearly all the state commissions commenting in the *UNE Remand* proceeding endorsed the adoption of a national list for UNEs.⁴ Here, the states would likely support a similar national standard for provisioning of the required loops. Such standards would ease the the state commissions’ role in evaluating and resolving disputes in this area.⁵ In most cases, the standards would be derived from standards the states have established through state-sponsored collaborative processes involving ILECs and CLECs. The implementation of national standards would provide greater clarity and guidance to a state in its effort to make local competition a reality in its state, and would build upon the good work the states have already done in collaborative proceedings with ILECs and CLECs.

² *Id.* at ¶ 117.

³ *Id.* at ¶ 153.

⁴ *Id.* at ¶ 119.

⁵ For instance, the Illinois, California and Connecticut public utility commissions all argued that a national list of UNEs would allow competition to proceed quickly because it will reduce the number of issues states must address in upcoming arbitrations. *Id.* at ¶ 128. National standards for loop provisioning would similarly reduce and clarify areas of dispute between an ILEC and a CLEC, thus allowing competition to proceed more quickly.

B. The Commission Has the Authority to Establish National Standards

There is no question as to the authority of the Commission to establish such provisioning standards, as most of the state commissions participating in the *UNE Remand* proceeding recognized⁶ As the Commission has noted, the Supreme Court “upheld explicitly the Commission’s jurisdiction to adopt minimum national rules to implement each subsection of the 1996 Act.”⁷ As the Supreme Court held in *AT&T Corporation v. Iowa Utilities Board*:

[T]he question in this case is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions’ participation in the administration of the new federal regime is to be guided by federal-agency regulations. If there is any “presumption” applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange.⁸

This is an area where having fifty different standards for loop provisioning not only would be “strange,” but also would not benefit anyone. This fact has been demonstrated by the FCC proceeding evaluating SBC Communications, Inc., *et al.*’s Section 271 application.⁹ There have been almost as many standards considered in that proceeding as items of data evaluated. For instance, on the issue of hot cuts, at various times three different standards were in play – the performance metrics utilized by the New York Public Service Commission (“NYPSC”), the

⁶ *Id.* at ¶ 119.

⁷ *Id.* at ¶ 121.

⁸ *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999)

⁹ *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (April 5, 2000).

standards adopted by the Commission in its *Bell Atlantic New York Order*,¹⁰ and the performance metrics utilized by the Texas Public Utility Commission (“Texas PUC”). Because the Commission issued its *BANY* Order during the Texas PUC’s evaluation of SBC’s performance, SBC had to repackage data so that it could be evaluated under the *BANY Order* standards, and the Texas PUC had to evaluate the data under two different standards.

The potential applicability of these conflicting standards over the course of the SBC 271 proceeding confused the analysis so much that various parties were arguing that the same data showed different things. All parties were disadvantaged by this, with the Texas PUC expressly noting that the lack of an FCC standard for unbundled loop conversions forced the Texas PUC to develop its own standard, only to have to modify it to reflect the FCC standard developed in the *BANY Order*.¹¹ It took months for SBC to disaggregate the data so that evaluation under the *BANY Order* metric was possible, further delaying completion of the docket and regulatory oversight of hot cut disputes

The development of national loop provisioning standards would prevent such situations. All parties would be given a clear understanding of what is required, and the standard would not vary depending on which state was involved. State public utility commissions would know which performance standards to utilize without worrying that, as the Texas PUC noted, their approaches could be “replaced by fiat with constantly evolving standards set by other tribunals.”¹² Both ILECs and CLECs would know from the outset how performance would be graded.

¹⁰ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket 99-295, Memorandum Opinion and Order (December 22, 1999).

¹¹ CC Docket 00-65, April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 3 (*TX PUC SBC 271 Comments*).

¹² *Id.*

C. Establishment of National Standards Can Be Effected By Synthesis of State-Developed Standards

Establishing national standards would not impose undue burdens on the Commission. As this Commission has noted, “a number of state commissions, including New York, have established a collaborative process through which they have developed, in conjunction with the incumbent and competing carriers, a set of measures, or metrics for the reporting of performance in various areas.”¹³ Rather than having to formulate wholly new standards, the Commission need only reconcile, and select the best of, the standards it has already set, the standards determined through the collaborative processes, and the standards proposed in this proceeding.

The Section 271 process to date has been a laboratory for identification and evaluation of the issues pertaining to loop provisioning, and it has provided a wealth of data and a choice of approaches and standards on which to build. As the Commission has noted:

[T]here is a common purpose between Sections 251 and 271 of the Act of opening the incumbents’ monopoly local exchange networks to competition. We believe that Congress intended section 251(c)(3) of the Act and the competitive checklist to contain similar, if not identical, obligations.¹⁴

Nor will BOCs, or other ILECs, be prejudiced by implementation of national standards based on those developed in the Section 271 process. While many of the proposed standards may have been developed in the context of Section 271 proceedings, the Section 271 checklist tracks, among other things, “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”¹⁵ The standards proposed in these

¹³ *BANY Order* at ¶ 54.

¹⁴ *UNE Remand Order* at ¶ 109.

¹⁵ 47 U.S.C. § 271(c)(2)(B)(ii).

Comments, for example, require just such nondiscriminatory access to the local loop and Operations Support Systems ("OSS") included in UNEs on the list previously issued by the FCC.¹⁶ Thus, establishing national standards in this area will not subject a BOC or other ILEC to new requirements.

Thus, the time is ripe for this Commission to heed the call of the *ALTS Petition* and implement national loop provisioning standards. The sections below further demonstrate the need for such standards and suggest standards for the Commission to consider in this proceeding. The suggested standards are, by no means, a definitive or exhaustive list. The Commenters also recognize that the procedural posture exercised by the Commission may have to vary depending on the issue. As *ALTS* demonstrated, however, a substantial record has already been developed regarding many of these issues in various Commission proceedings.¹⁷ Many standards could merely be established by clarifying, construing, or modifying (as necessary) existing FCC rules on loop provisioning.¹⁸ The Commission may deem it necessary to initiate a rulemaking proceeding for those issues it feels are not as developed and would benefit from a Notice of Proposed Rulemaking.¹⁹ The Commenters offer these standards as a starting point for the Commission in its determinations. The Commission may determine that in certain areas even more stringent standards are needed to promote competition, and the Commenters would certainly welcome such a determination.

¹⁶ *UNE Remand Order* at ¶¶ 162 *et seq.*

¹⁷ Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning (May 17, 2000) at p. 3, fn. 4.

¹⁸ *Id.*

¹⁹ *Id.*

II. Loop Provisioning is Critical for Effective Local Competition

Efficient and timely provisioning of loops is critical to the development of a competitive local services market. It has been just over four years since the passage of the Telecommunications Act of 1996. Much of this time has been spent defining the parameters of, and pricing rules for, UNEs. These efforts, and the prospects for true local competition that they engendered, will be imperiled if CLECs are not able to procure loops in a timely and efficient manner. The dynamics of the market are such that any delay in getting the end user the service it requires jeopardizes retention of the customer by the CLEC, regardless of how much better, or more desirable, the CLEC's product may be. The Commenters, therefore, strongly support ALTS call for "minimum requirements for loop provisioning as a matter of federal law."²⁰ The Commenters also agree that these requirements should be implemented not only for voice-grade loops, but for those local loops and interoffice transport facilities capable of transmitting high-speed digital signals to a global Internet gateway. Such local loops include two-wire digital loops (ISDN-capable), basic four wire loops, and all high capacity loops (*i.e.*, two-wire and four-wire ADSL-, SDSL-, and HDSL- qualified loops, two- and four-wire digitally designed loops, DS 3 loops and dark fiber loops). Interoffice transport facilities include fiber optic facilities and multiplexers capable of transmitting data signals ranging from OC-3 levels to OC-196 levels and dark fiber.

The standards need to cover all aspects of loop provisioning. Loop provisioning encompasses not only the actual providing of the loop, but also the preparatory steps for such provisioning, as well as post-provisioning activities that ensure that the CLEC has been provided a properly functioning loop. Thus, the Commission needs to examine issues pertaining not only to the ordering and delivery of the loop, but also those pertaining to the pre-ordering and post-delivery efforts as well. In addition, there are both voice-grade loops and high-capacity,

²⁰ *ALTS Petition* at p. 20.

digitally-enabled loops. Finally, there are various ways that loops may be obtained, *i.e.*, a carrier may obtain a new loop, obtain an existing loop that is provisioned either through a “hot cut,” or obtain an existing loop that is part of an UNE Platform. Given the complexity of loop provisioning, specific standards will need to be developed for each stage and each manner of loop provisioning.

As ALTS has pointed out, however, the Commission does not need to start from scratch in developing these standards. Another four years will not need to be invested in making the provisioning of unbundled loops a reality, as opposed to a goal. Standards have been developed in the context of consideration of Regional Bell Operating Company (“RBOC”) applications for Section 271 authority to provide in-region, interLATA authority. These standards have emanated from not only this Commission, but also from the evaluation of these applications by state public utility commissions and the United States Department of Justice. In addition, the Section 271 applicants, CLECs, and other interested parties have provided worthwhile suggestions in their comments on the various applications. This Commission’s task is to cull what is the best from these various approaches and formulate them into viable and authoritative standards that give effect to the timely provisioning of unbundled loops, and the goals such provisioning furthers, *i.e.*, the pro-competitive goals encapsulated in the Telecommunications Act of 1996.

III. Possible Loop Provisioning Standards

The following are suggested standards for the various stages of loop provisioning, starting from the stage where the CLEC begins formulating its order to post-delivery issues. This is not an exhaustive list as there are many stages to each process. These Comments touch areas that have been of particular concern to CLECs. Discrete standards are proposed for both voice-grade loops and xDSL-capable loops to the extent required by the different technologies

utilized.²¹ In addition, the section on actual provisioning addresses the various possible methods of provisioning, and suggests specific standards applicable to each method.

A. Pre-Ordering Phase Standards

The pre-ordering stage encompasses those activities that a carrier undertakes to gather and verify the information needed to place an ILEC service order to accommodate a customer's requirements. National standards for this stage must require not only rapid order processing but also rapid, efficient, and accurate database access. Before the CLEC can even begin to place the order, the CLEC must determine what the ILEC is able to provide. The CLEC operates at an information disadvantage vis-a-vis the ILEC, whose database already indicates what services can be provided to a particular end-user, and the CLEC must overcome this disadvantage quickly to retain the customer. As the Commission has noted:

[g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.²²

The general standard that this Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations is that the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."²³ This is appropriate because most pre-ordering functions that support service through UNEs are analogous to the pre-ordering of a

²¹ Very often standards will be equally applicable to voice-grade analog and xDSL capable loops. For the sake of brevity, distinctions will be made for xDSL capable loops where such distinctions are applicable and relevant.

²² *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (December 22, 1999) at ¶ 129 ("*BANY Order*").

²³ *Id.*

BOC's retail services. For those pre-ordering functions that lack a retail analogue, the BOC "must provide access that affords an efficient competitor a meaningful opportunity to compete."²⁴ The pre-ordering standards proposed below for this stage apply these pre-developed principles to particular aspects of the pre-ordering process.

1. Standard for Application-to-Application Interface

Proposed Standard – Parsed customer service records ("CSRs") provided in parity plus no more than ten seconds.

The Commission has previously emphasized that "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."²⁵ It is not enough, however, that the CLEC have access to the same information as does the BOC. Rather the CLEC must also have the ability to retrieve this information and process the information on terms and conditions at parity with those applied to the ILEC's retail services.

One of the major problems that CLECs have had in interfacing with a BOC's pre-ordering functionality pertains to "parsing"²⁶ pre-ordering information.²⁷ As this Commission has observed:

²⁴ *Id.*

²⁵ *Id.*

²⁶ Parsing involves the breaking down of information in specific fields. Parsed formats provide a readable format to the data by placing lines and spaces within the text. Many BOC ordering systems require CLECs to enter data in a parsed format.

²⁷ *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000)("AT&T SBC 271 Comments"); MCI WorldCom Comments at 9 (April 26, 2000)("WorldCom SBC 271 Comments").

[I]n this regard, the BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carriers' own back office systems, which may require "parsing" pre-ordering information into identifiable fields. Without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This lack of integration would place competitors at a competitive disadvantage and significantly impact a carrier's ability to serve its customers in a timely and efficient manner.²⁸

The Commission has been almost prescient on this point. CLECs in Texas have been experiencing this problem in regard to the failure of SBC to provide pre-ordering information in a parsed format that would allow it to be automatically populated into Electronic Data Interface ("EDI") ordering fields.²⁹ This has led to excessive CLEC order rejections.³⁰ In addition, CLECs have had to expend valuable time and resources to get the information into a format that the BOC system will accept. The problem is exacerbated by the fact that many ILEC retail divisions do not have to perform parsing in order to place an order.³¹

This situation demonstrates in a nutshell why it is not enough for the Commission merely to mandate access to such items as parsed CSRs. For the UNE provisioning requirement to be effective, precise provisioning intervals need to be established and implemented.³² Whenever a CLEC is denied information on a parity basis, the ILEC is able to leverage its informational

²⁸ *BANY Order at ¶ 137.*

²⁹ *AT&T SBC 271 Comments at p. 51; WorldCom SBC 271 Comments at p. 6.*

³⁰ *AT&T SBC 271 Comments at p. 52.*

³¹ *WorldCom SBC 271 Comments at p. 13.*

³² For instance, the New York Public Service Commission has instituted a performance metric for parsed CSRs transactions that require parity with retail plus not more than ten seconds. *See Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petition for Reconsideration, Clarification, and Stay, Case 97-C-0139 (NY PSC Nov. 5, 1999) ("NY PSC Order I").*

advantage. As MCI WorldCom has pointed out, a few seconds per order may not seem like much, but when functions such as parsing have to be performed on each and every order, the seconds add up.³³ This demonstrates how a timing performance standard can further the goals of the Telecommunications Act. Once it is determined that a CLEC is entitled to access to particular information, timing becomes crucial, especially in situations where the ILEC retail entity has access to the same information or need not perform a specific data dip. Timing metrics ensure that the conditions governing CLEC access to ILEC databases further pro-competitive goals.

The Commenters therefore urge this Commission to implement, at a minimum, the New York Public Service Commission ("NY PSC") standard for parsed CSRs the FCC used effectively in evaluating Bell Atlantic's performance in this area.³⁴ The Bell Atlantic proceeding demonstrated the need for, and usefulness of, concrete timing requirements, and the Commission can easily adopt the same useful standard here.

2. Loop Make-up Information

Proposed Standards

Mechanized Loop Qualification – Parity with retail plus no more than four seconds.

Manual Loop Qualification – 95% of requests completed within 72 hours.

CLECs need access to detailed "loop make-up" information about available loops, such as the length and gauge of the loop and the presence of bridged taps, load coils, and digital loop carrier equipment.³⁵ As this Commission has observed, "[b]ecause characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain

³³ *WorldCom SBC 271 Comments* at p. 12.

³⁴ *BANY Order*, ¶ 152.

³⁵ *BANY Order*, ¶ 141.

advanced technologies, carriers often seek to 'pre-qualify' a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without removal of the impediments, can support a particular service."³⁶ The Commission has also recognized that, "[i]f new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not the loop is capable of supporting xDSL-based services."³⁷

Because the xDSL ordering process in New York was in its nascent stage when Bell Atlantic's Section 271 application was evaluated, the Commission considered only the access CLECs had to the BOC's databases.³⁸ Consideration of SBC's provisioning of xDSL loops in the proceeding evaluating its 271 application, however, has provided the laboratory experience needed for development of a standard for evaluation of access to loop make-up information. As ALTS has demonstrated in its petition, SBC's loop qualification system is grossly out of parity with the access SBC provides to its own SBC retail DSL sales force.³⁹

Once again, the NY PSC is the vanguard in providing timing intervals to measure BOC performance. They have recognized that it is not sufficient to determine only if response time is at parity, as the Texas PUC does.⁴⁰ Therefore, the NY PSC has established two performance measures in this area. The first, PO-1-06, tracks average response time for mechanized loop

³⁶ *Id.* at ¶ 140, fn. 419.

³⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147 *et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 24012, 24038 (1998) ("*Advanced Services Order*").

³⁸ *BANY Order* at ¶ 143.

³⁹ *ALTS Petition*, p. 24.

⁴⁰ The Texas PUC has a Performance Measure 57 that tracks average response time for loop make-up information for both manually generated and electronically generated xDSL orders. See CC Docket 00-65, April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 28.

qualification, with the standard being parity with retail but not more than 4 seconds.⁴¹ PO-8-01 tracks the average response time for manual loop qualification, and the standard is 95% completed within 72 hours.⁴² The Commission should adopt these standards to ensure timely provision of loop qualification data, whether performed manually or on a mechanized basis

B. Loop Ordering

Proposed Standards

Return of 95% of mechanized order confirmation and rejection notices within two hours of submission to the ILEC.

Return of 95% of manually processed order confirmation and rejection notices under ten lines within 24 hours of submission.⁴³

1. Order Rejects

This Commission has previously focused on flow-through rates as an indica of parity in the ordering stage.⁴⁴ As ILEC ordering systems become more mechanized, flow-through rates have ceased to be the prime area of inquiry. Instead this Commission has focused on an ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems."⁴⁵ Data from the SBC proceeding suggest,⁴⁶

⁴¹ *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, Case 97-C-0139 (NY PSC Feb. 16, 2000), p. 19 (*NYPSC Order II*).

⁴² *Id.*

⁴³ For xDSL services, the applicable timeframe is 72 hours.

⁴⁴ "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. *BANY* Order at ¶ 160, fn. 488. The flow-through rate often "serves as a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commerical volumes of orders." *Id.* at ¶ 162, fn. 496.

⁴⁵ *Id.* at ¶ 163.

however, that flow-through may still be a big problem. Sprint has pointed out that reject rates for orders sent over the SBC's electronic interfaces have reached a percentage plateau in the mid-20s.⁴⁷ Sprint has also demonstrated that SBC cannot palm these errors off as CLEC-caused.⁴⁸ Sprint has further demonstrated that there is not a wide range of flow-through rates as found in New York, which had suggested that flow-through problems may be due to variations in CLEC care in submitting orders.⁴⁹

Thus, given the prevalence of high rejection rates and low flow-through rates, the timing of the delivery of rejection notices becomes all the more critical. Failure to return timely rejection notices is particularly harmful because "new entrants cannot correct errors and resubmit orders until they are notified of their rejection."⁵⁰ AT&T has observed that the situation is compounded in Texas where not only are there high rejection rates, but also more than a third of SBC's rejection notices are manually typed by a SBC representative before they are sent to CLECs – a process that leads to excessive delays.⁵¹ SBC retail ordering systems, however, possess capabilities that allow for all but a small percentage of errors to be detected electronically before the order is even submitted.⁵² The adverse effects of CLECs on untimely

⁴⁶ CC Docket No. 00-65.

⁴⁷ CC Docket No. 00-65, April 26, 2000 Petition to Deny of Sprint Communications Company, L.P. at p. 39 (*Sprint SBC 271 Comments*).

⁴⁸ *Id.* at p. 40.

⁴⁹ *Id.* at 41.

⁵⁰ *Id.* at p. 43 citing *Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539, ¶ 117 (1997).

⁵¹ *AT&T SBC 271 Comments* at p. 49.

⁵² *AT&T SBC 271 Comments*, p. 50.

reject notification is starkly demonstrated by the experience in Texas. As MCI WorldCom pointed out:

Orders that are rejected take far longer to complete especially when rejects are manually processed. SWBT takes more than six hours on average to manually process the rejects which are then returned to the CLECs. The CLECs must in turn determine the problem with the initial order, correct that problem – which often requires significant work by the CLEC and re-transmit the order. Even the re-transmitted order is likely to take longer to process than a typical order. This is because SWBT manually processes all supplemental orders to correct manually processed rejects. Thus, SWBT's high reject rate, high level of manual processing of rejects, and slow return of those rejects pose a substantial barrier to CLEC entry.⁵³

Strict timing metrics coupled with enforcement mechanisms will provide ILECs the incentive to process fully electronic rejects.

2. Timeliness of “Jeopardy” Notices of Missed ILEC Deadlines

Proposed Standard

Timeliness of notice of jeopardy of service order request where miss is known in advance of due date (missed commitment with new date/time).

100% within 24 hours before due date where facilities are provided.

100% within 48 hours before due date where no facilities are provided.

While the Commission previously declined to implement a jeopardy notice requirement, subsequent proceedings have demonstrated that such notification is not only very important to ensure non-discriminatory provisioning and mitigate damage to customer relations, but it is also feasible. Jeopardy notices involve notification by the BOC to the CLEC that a service installation or repair due date will be missed.⁵⁴ The importance of jeopardy notices cannot be overstated because a missed service installation date will literally place an order in “jeopardy”

⁵³ *WorldCom SBC 271 Comments*, p. 28 (citations omitted).

⁵⁴ *BANY Order* at ¶ 184.

for the CLEC. The Commission, however, in its *BANY* Order, declined to require a BOC to actively provide jeopardy notices, instead of merely providing access to such information.⁵⁵ The Commission also rejected suggestions that a BOC be required to provide notices before the due date that it is going to miss a due date, although the Commission acknowledged that “a system designed to deliver jeopardy notification well in advance of missed appointments would lessen the impact of such misses.”⁵⁶

The Commission, however, declined to require Bell Atlantic to issue jeopardy notices because it mistakenly believed that CLECs were getting the same access to order information as Bell Atlantic’s retail operations staff. A subsequent NY PSC proceeding, however, found that CLECs, in fact, did not have real-time access to the order information, that CLECs had to rely on faxes to obtain information, and that the information was not being updated as frequently as Bell Atlantic had represented.⁵⁷ In addition, Bell Atlantic did have the capability to provide jeopardy notices, and in some cases, was providing such notices, but it was not doing so on a uniform basis. Bell Atlantic provided such notices via telephone, but acknowledged delays in the system. The notices were routed through a dispatch center to an operations center. The operations center was the one that notified the CLEC.⁵⁸ The NY PSC, therefore, directed Bell Atlantic to address the feasibility of modifying procedures to expedite the flow of jeopardy notices to CLECs. Once Bell Atlantic had addressed this issue, the NY PSC called for the parties to work together to develop “mutually acceptable procedures for the timely provision of jeopardy notices.”⁵⁹

⁵⁵ *Id.* at ¶ 185.

⁵⁶ *Id.*

⁵⁷ *NY PSC Order II*, p. 13.

⁵⁸ *Id.* at p. 14.

⁵⁹ *Id.*

Based on this experience, the Commission may want to revisit its prior determinations on jeopardy notices in light of the developments in New York and that both Bell Atlantic and SBC have demonstrated the ability to send jeopardy notices to CLECs.⁶⁰ ILECs should be required to provide jeopardy notices, and to provide such notices in a timely manner that will allow the CLEC to notify the end-user well in advance that a due date may be missed. A separate performance metric should be created for delivery of jeopardy notices.

A possible standard is the “Due Date Minus Two” procedure Bell Atlantic applies to provide jeopardy notices in regard to hot cuts. Under the procedure, Bell Atlantic is required to check for a competing carrier’s dial tone two days before a hot cut date and promptly notify the carrier if there is a problem.⁶¹ This procedure, in the words of the NY PSC, “allows the [competitive LEC] the opportunity to notify its customer of potential delay and, if necessary, postpone the due date.”⁶² The Commission commended Bell Atlantic for developing this jeopardy process for hot cuts and found “that it appears to be critical to the proper functioning of the hot cut process.”⁶³ There is no reason why ILECs should not implement a similar jeopardy process for non-hot cut orders, especially since such an advance process is equally critical for those orders. An end-user kept waiting experiences frustration similar to that of an end-user that experiences a loss of dial tone.

The need for jeopardy notices in regard to missed appointments is clearly demonstrated by the problems Vitts has been experiencing with Bell Atlantic. Vitts’ customers have endured

⁶⁰ *TX PUC SBC 271 Evaluation*, p. 9.

⁶¹ *BANY Order*, ¶ 186.

⁶² *Id.*

⁶³ *Id.*

numerous missed appointments.⁶⁴ Missed appointments are never excusable, but at least if the ILEC notifies the CLEC, the CLEC can take measures to limit inconvenience to the customer. If an appointment is missed, and the customer is not notified in advance, the customer will blame the CLEC.

C. Provisioning Interval Standards

There are three ways that an ILEC can provision unbundled loops to the CLEC. First, when the BOC does not serve the customer on the lines in question, the CLEC may obtain a “new” loop from the BOC. Second, the BOC may provision stand-alone loops to competing carriers through coordinated conversions of active loops to the carrier’s collocation space. This process is known as a “hot cut.” The third option is provisioning the loop as part of a platform of network elements.⁶⁵ Suggested standards for the various provisioning situations are discussed below.

1. Average Completion Intervals

Proposed Standard – ILEC must provision 95% of xDSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops).⁶⁶

The Commission has found that Average Installation Interval data is critical to determining if “a BOC provides equivalent access to OSS because such data are ‘direct evidence of whether [a BOC] takes the same time to complete installations for competing carriers as it

⁶⁴ Declaration of Bruce Dyke on Behalf of Votts Network, Inc. (“Dyke Declaration”) at ¶¶ 8, 9, 12, 18, 22, 26, 41, 44, 54, 66, 67, 68.

⁶⁵ *BANY Order*, ¶ 276.

⁶⁶ This section focuses on completion intervals for XDSL-capable loops because this has been a pressing issue of late. The Commenters urge strict completion intervals for voice loops as well, and note that completion intervals for voice loops should be significantly shorter for voice loops given the difference in technology.

does for [itself], which is integral to the concept of equivalent access.”⁶⁷ The Commission has noted the importance of the average interval in evaluating a BOC’s provision of xDSL-capable loops. The Commission has held that “we would expect a BOC to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL-capable loops to competitors either in substantially the same average interval in which it provides xDSL-capable service to its retail customers or in an interval that offers competing carriers a meaningful opportunity to compete.”⁶⁸

The average provisioning interval must be evaluated in the light of data detailing missed due dates. The Commission has previously suggested consideration of the average completion interval in context with missed due dates because in some circumstances the completion interval may not be, on its own, an accurate indicator of whether a BOC is providing loops in a timely manner.⁶⁹ In Texas, SBC’s performance in regard to both completion intervals and missed due dates was out of parity for a significant amount of time.⁷⁰ Thus, CLEC end-users would be suffering the double ignominy of delays in getting their DSL service as well as the frustration of missed appointments.

Once again, this situation demonstrates how across-the-board standards will further the pro-competitive goals of the act. Requiring an ILEC to provision loops within a certain defined interval will help ensure that appointments are not missed, because the ILEC could ill afford the provisioning delay that a missed due date would cause.

2. Hot Cuts

⁶⁷ *Id.* at ¶ 193.

⁶⁸ *BANY Order*, ¶ 335.

⁶⁹ *Id.* at ¶ 289.

⁷⁰ CC Docket 00-65, Comments of @Link, Bluestar, Mpower and Pontio at pp. 11-12 (April 26, 2000)

Proposed Standard

TX PUC Benchmark – 100% of orders of 24 lines or fewer completed within two hours.

Analogous Bell Atlantic New York Order standard – 90% of orders of ten loops or fewer to be completed within one hour.

CLEC standard – 98% of orders of ten loops or fewer to be completed within one hour.

ILEC provisioning of unbundled loops requires “the use of coordinated conversions of active customers” from the ILEC to the competing carriers.⁷¹ This process is known as a “hot cut” and entails manually disconnecting the customer’s loop in the ILEC’s central office and reconnecting the loop at the competing carrier’s collocation space.⁷² The customer is taken out of service while the hot cut is in progress, thus, the “hot” in the cut.⁷³ It is critical that the hot cut be provisioned correctly with coordination between the ILEC and the competing carrier because problems with the cutover could result in extended service disruptions for the customer.⁷⁴ For a competing carrier trying to convince a customer that its change from the incumbent to the competitor was the correct choice, it goes without saying that the shorter the service disruption the better.

For orders of fewer than ten lines, the Commission indicated in its *BANY Order* that an ILEC has one hour in which to complete the coordinated cutover and report the completion of the hot cut to the competing carrier.⁷⁵ The Commission has stated that on-time hot cut performance at a level of 90 percent or greater is sufficient to permit carriers to enter and compete in a meaningful way in the local exchange market.⁷⁶ The import of inadequate ILEC

⁷¹ *Bell Atlantic New York Order*, ¶ 291.

⁷² *Bell Atlantic New York Order*, ¶ 291, fn. 925.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶ 292.

⁷⁶ *Id.* at ¶ 298.

provisioning of hot cuts epitomizes the over-all impact of deficient ILEC provisioning on the development of local competition. Deficiencies in hot cut performance will impose out-of-pocket costs on the CLEC, try the end-user's patience, and provide competitive benefits to the BOC. According to a survey conducted by the Competition Policy Institute, the "[s]trongest impediment to switching [LECs] comes from concern about service interruptions during the change over."⁷⁷

Thus, BOCs have a clear disincentive to provide lower quality service in regard to hot cuts, at least up to the limits that the Commission's "minimally acceptable standards" will permit. One of the key issues in the appeal by AT&T Corp. and Covad Communications of the *Bell Atlantic New York Order* is that the Commission set the bar too low in regard to hot cut performance by failing to focus the performance standards on what is technically and commercially feasible for the BOC.⁷⁸ For instance, the standards in the *Bell Atlantic New York Order* already constituted a departure from performance standards that the NY PSC, and Bell Atlantic itself, felt were capable of being achieved.⁷⁹ AT&T has astutely observed that a BOC has every incentive to perform down to the standard, *i.e.*, allow as many outages as it can

⁷⁷ Evaluation of the United States Department of Justice, *In re: Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295 (November 1, 1999), p. 18, n. 39.

⁷⁸ See Brief for Appellants AT&T Corp. and Covad Communications Company at pp. 43 to 49, *AT&T Corp., et al., v. Federal Communications Commission* (No. 99-1538) (D.C. Cir) (Appellants argue that substantially better performance standards were "technically feasible" in comparison to those the FCC found minimally acceptable).

⁷⁹ *Id.* at p. 48. For instance, the NY PSC had set a minimum standard of 95 percent on-time performance, not the 90% standard eventually established. *Bell Atlantic New York Order* at ¶ 292.

consistent with regulatory requirements.⁸⁰ At the very least, the ILEC will use the floor as the ceiling, *i.e.*, it will only provide what it is required to do, and not what may be achievable.

The evidence in recent Section 271 applications also suggests this is the case. Bell Atlantic's performance constituted the minimally acceptable showing.⁸¹ SBC's performance has been even worse. As the Department of Justice noted in its initial evaluation, "SBC's performance with regard to 'hot cuts' is worse than Bell Atlantic's performance in New York, which the Commission concluded was 'minimally acceptable.'"⁸² The Department of Justice ("DOJ") has recognized recent improvement in SBC's hot cut provisioning, but DOJ notes that SBC's FDT process "still shows significant defects."⁸³

The Commission should, therefore, set a high, but achievable, standard for hot cut timing rather than lower the bar any more in regard to hot cut performance. If this Commission lowers the standard for hot cut performance, it rewards BOCs for underperforming, and it gives the incentive to BOCs to push the envelope and try to lower the standards even more. The FCC has recognized that hot cut performance is vital not only to competitive carriers, but also to the public at large because failure in this area leads to loss of, or disruption to, service.⁸⁴ The proposed standard is higher than that of the *BANY* Order, but it is achievable, and it should be adopted.

⁸⁰ *AT&T SBC 271 Comments*, p. 28.

⁸¹ *BANY Order*, ¶ 309.

⁸² CC Docket 00-65, February 14, 2000 Evaluation of the United States Department of Justice, p. 27.

⁸³ CC Docket 00-65, June 13, 2000 Evaluation of the U.S. Department of Justice, p. 8. *See* footnote 105 *infra*, for an explanation of FDT hot cuts.

⁸⁴ *BANY Order* at ¶ 309.

D. Maintenance and Repair

The provisioning of a loop does not end when a loop is “delivered” to the CLEC. There are both maintenance and repair issues that arise after the loop is accepted by the CLEC. These problems may appear immediately after the loop is provisioned, or they may occur some time after the actual provisioning.

1. Maintenance and Repair Functionality

Proposed Standard

Access to ILEC maintenance and repair interfaces at parity.

The ILEC must offer access to maintenance and repair interfaces and systems at parity with the access its retail divisions have.⁸⁵ Such necessary access includes the ability to conduct mechanized loop tests, to create trouble tickets, to determine the status of a trouble ticket, and to request a trouble report history.⁸⁶ This Commission has noted that “without electronic access for competing carriers, the BOC’s ability to correct trouble reports while on line with the customer would be a ‘crucial competitive advantage.’”⁸⁷ Thus, of particular concern is the CLEC’s ability to use electronic interfaces to submit trouble tickets relating to unbundled network elements.⁸⁸

The Commission has also indicated that “a BOC would afford carriers a more complete opportunity to compete by offering an integratable, application-to-application maintenance and repair interface.”⁸⁹ The Commission, however, declined to require that Bell Atlantic offer such a

⁸⁵ *BANY Order*, ¶ 213.

⁸⁶ *Id.*

⁸⁷ *Id.* at fn. 677.

⁸⁸ There was a claim by Prism in the *BANY Order* proceeding that it had to manually submit trouble tickets because the Repair Trouble Administration System could not be used for UNEs. *Id.* at fn. 683.

⁸⁹ *Id.* at 215.

system. Now, however, given the issues raised in this proceeding in regard to timing of maintenance and repair of loops, the Commission should require such an application-to-application interface. Such an interface could only help to expedite resolution of trouble reports.

CLECs should also have the ability to be able to open trouble tickets immediately on recently-completed service orders.⁹⁰ An improperly provisioned loop will already be the cause of much consternation for the customer; a delay in getting the trouble addressed will only compound the frustration.

2. Response Times

Proposed Standard

Parity plus four seconds for response times.

The Commission has already ruled that an ILEC must process trouble inquiries from competing carriers “in substantially the same time and manner as [the ILEC] processes inquiries concerning its own retail customers.”⁹¹ The Commission recognized that for CLECs to compete effectively they must be able to:

diagnose and process customer trouble complaints with the same speed and accuracy that [the ILEC] diagnoses and processes complaints from its retail customers. A slower process can lead to customer perception that the competing carrier is a less efficient service provider than the BOC.⁹²

The NY PSC has implemented a performance standard of “parity plus four seconds” which is the same standard used for pre-ordering OSS response times.⁹³ Response time covers

⁹⁰ Covad noted in the *BANY* proceeding that it was unable to open a trouble ticket for at least 24 hours after the due date. *Id.* at ¶ 216.

⁹¹ *BANY Order*, ¶ 217.

⁹² *Id.*

⁹³ *Id.*

the number of seconds from the issuance of a query to the receipt of a response by the requesting carrier. The four seconds is added for additional security measures and differences in functionality involved for the CLEC to access the ILEC's OSS.⁹⁴ Experience in New York demonstrates that this standard is achievable, and the Commission should adopt it to ensure effective competition.

3. Time to Restore

Proposed Standard – Parity with retail.

The Commission “has stressed that a BOC is obligated to repair trouble for a customer of a requesting carrier in substantially the same time that it takes to repair problems for experienced by its own customers.”⁹⁵

Vitts's customers have endured incredibly protracted service outages. One customer had service out for 23 days.⁹⁶ Another had service disruptions spanning two weeks; two others had outages of 10 days apiece.⁹⁷ The worst case was the customer who suffered through one and a half months of service disruption.⁹⁸ Customers who endure such interminable outages will vent their frustrations at their service provider, the CLEC, not realizing or caring that the problems are caused by the ILEC.

A key consideration in this area is the missed repair appointments. In New York, in the time period while its Section 271 application was being reviewed, Bell Atlantic was missing loop

⁹⁴ *Id.* at ¶ 218.

⁹⁵ *Id.* at ¶ 220.

⁹⁶ Dyke Declaration at ¶ 13.

⁹⁷ Dyke Declaration at ¶¶ 29, 57, 62.

⁹⁸ *Id.* at ¶ 35.

repair appointments at a higher rate for CLECs in comparison than for its retail operations.⁹⁹ As discussed *supra*, Vitts's customers suffered through many missed appointments.

4. Quality of Work Performed

Proposed Standard

For hot cut loops – Trouble Reports on no more than 2% of orders within 7 days.

It is, of course, vital not only that the work be done quickly, but also that it be done well.

As the Commission has observed:

[I]n order to compete effectively in the local exchange market, competing carriers must be able to access maintenance and repair functions in a manner that enables them to provide service to their customers at a level of quality that matches the quality of service that [the BOC] provides its own customers. A competing carrier's customer may become dissatisfied if the customer experiences frequent service problems, especially repeated troubles. In determining the quality of maintenance and repair work performed by Bell Atlantic for competing carriers, we examine the rate of trouble reported by customers of competing carriers as compared with [the BOC's] own retail customers, as well as the rate of repeat reports of trouble.¹⁰⁰

Vitts's customers have a high repeat rate for problems in service. One customer had service outages on three separate occasions in the span of a month.¹⁰¹ The outages lasted four, four, and five days respectively and were all ILEC-caused.¹⁰² For another customer, Bell Atlantic replaced a bad card in the Subscriber's Line Interface Circuit. A few days later, Bell Atlantic found another bad card, which it also replaced.¹⁰³ Both these measures failed to solve

⁹⁹ *BANY Order* at ¶ 311.

¹⁰⁰ *Id.* at ¶ 223.

¹⁰¹ *Dyke Declaration* at ¶ 5.

¹⁰² *Id.*

¹⁰³ *Dyke Declaration* at ¶¶ 18-20.

the problem, and the problem continued, until finally, over a week later, Bell Atlantic found a bad cable pair in its central office that was causing the problem.¹⁰⁴

Another area that needs close scrutiny is the premature closing of trouble tickets by the ILEC. Some ILEC technicians will close out a CLEC trouble ticket even if the customer is not back in service if they found no trouble at the specific dispatch location without checking other locations.¹⁰⁵ For these “misdirected dispatch situations,” a CLEC would need to open a second trouble ticket to resolve the problem. In New York, however, Bell Atlantic, on its retail side does not close out the report but instead attempts to isolate and fix the problem.¹⁰⁶

Vitts has experienced Bell Atlantic’s premature closing of trouble tickets on countless occasions.¹⁰⁷ Bell Atlantic technicians closed those tickets despite the customer still being out of service. As a result, the CLEC has to keep re-submitting trouble tickets and asking technicians to be dispatched (even though they may never show up). It is no wonder that it takes so long for service to be restored.

In regard to provisioning of xDSL-capable loops, SBC confirmed that for the three months up to February 2000, CLECs reported troubles within 30 days of the installation of the new loop at a rate much higher than the benchmark permits.¹⁰⁸ Trouble reports were issued on CLEC unbundled xDSL loops within 30 days of installation practically twice as often as trouble reports for SBC loops.¹⁰⁹ If CLEC customers are experiencing a high number of trouble reports

¹⁰⁴ *Id.* at ¶ 26.

¹⁰⁵ *BANY Order* at ¶ 225.

¹⁰⁶ *NYPSC Order I* at p. 23.

¹⁰⁷ Dyke Declaration at ¶¶ 10, 15, 17, 18, 20, 39, 42, 47, 50, 52, 66.

¹⁰⁸ *AT&T SBC 271 Comments*, p. 22.

¹⁰⁹ *Sprint SBC 271 Comments*, p. 18.

coupled with delays in getting these problems addressed, the customer will blame the CLEC regardless of whose fault it is. Ironically, in many cases the customer will return to the very company, the ILEC, whose fault caused both the problem and the delay in addressing the problem. Once again, it cannot be emphasized enough that nondiscriminatory access standards need strict and definite timing requirements to ensure that CLECs and their customers are not being disadvantaged.

ILEC provisioning of unbundled loops through hot cuts has been equally dismal. While SBC is marginally compliant on this metric for fully coordinated “CHC” orders,¹¹⁰ its performance on Frame Due Time (“FDT”) orders is poor.¹¹¹ SBC exceeded the 2% standard for FDT orders in January and February of this year, and its overall performance rate for January-March 2000 is 2.45%.¹¹² In February, SBC’s trouble report rate was 3.28%.¹¹³

5. Escalation Procedures Are Essential

In addition, given the above-referenced problems, the Commission should establish repair escalation procedures to complement the performance metrics. It is important that these rules function automatically without imposing administrative and regulatory burdens on

¹¹⁰ It should be noted that SBC’s average CHC trouble report rate is 1.7% while Bell Atlantic’s was 0.7%, and even in its worst month, Bell Atlantic only had a rate of 1.26%. *AT&T SBC 271 Comments*, p. 37; *April 26, 2000 TX PUC SBC 271 Comments*, p. 19.

¹¹¹ SBC uses two hot cut processes. One is a fully coordinated hot cut (“CHC”) process which is to be used for conversions of orders of twenty or more lines. These orders are manually processed and require intensive coordination and communication between SBC and the CLEC. Thus, they are performed outside of normal business hours. FDT cuts are used for cuts of fewer than 20 lines and are performed during normal business hours since they can be processed without the manual intervention of SBC representatives. *USDofJ SBC 271 Evaluation* at 27.

¹¹² April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 23.

¹¹³ *Id.*

competitors.¹¹⁴ Specifically, the Commenters propose that, at a minimum, the Commission adopt the following rules:¹¹⁵

- If trouble occurs within network elements provided by the ILEC, the CLEC will first determine whether the trouble is in the CLEC's own equipment and/or facilities or those of the End User. If the CLEC determines the trouble is in the ILEC's equipment and/or facilities, the CLEC will issue a trouble report to the ILEC via the ILEC's electronic interface, by telephone, electronic mail or facsimile.
- If a trouble ticket remains open after 4 hours, the ILEC will proactively escalate the trouble ticket to a first line supervisor. Such supervisor will provide the CLEC with an Action Plan to resolve the trouble within the next 4 hours.
- If a trouble ticket remains open after 8 hours, the ILEC will proactively escalate the trouble ticket to the Manager. The Manager will update the CLEC within 12 hours after the trouble ticket is opened with an Action Plan to resolve the trouble.
- If a trouble ticket remains open after 12 hours, the ILEC will proactively escalate the trouble ticket to the Director level. The Director will update the CLEC within 16 hours after the trouble ticket is opened with an Action Plan to resolve the trouble. At this time, the CLEC may request hourly updates from the ILEC. This will allow the CLEC the ability to better address our end-user concerns.
- If a trouble ticket remains open after 24 hours, the ILEC will proactively escalate the trouble ticket to the Vice President level. The Vice President will update the CLEC and agree to a same-day vendor meeting at location(s) necessary to resolve the trouble within 8 business hours.
- All trouble tickets will remain open until the ILEC, through the same electronic interface used to submit the trouble ticket, notifies the CLEC that the trouble ticket has been resolved, and the CLEC within 12 hours confirms resolution or denies resolution.

¹¹⁴ The Commission made this very point in the *BANY Order* when discussing the performance assurance plans adopted by the New York Commission. See *Bell ANY Order* ¶ 12.

¹¹⁵ Some carriers may be able to offer more rapid escalation procedures. The Commenters encourage even more effective escalation procedures if such procedures are currently offered.